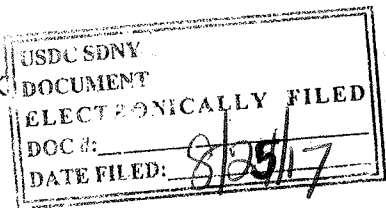


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ITOFFEE R. GAYLE

Write the full name of each plaintiff.

1:17cv 05867-JMF

(Include case number if one has been assigned)

-against-

**AMENDED
COMPLAINT**

HOME BOX OFFICE, INC (HBO)

Do you want a jury trial?

☒ Yes ☐ No

RACHEL STROM

ADAM LAZIER

STEVE SAPIENZA

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

RECEIVED
SDNY PRO SE SERVICE
2017 AUG 25 AM 10:50
S.D. OF N.Y.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

☒ Federal Question

☐ Diversity of Citizenship

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

i) COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 504

ii) FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114(a)

iii) FEDERAL UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or
subject of the foreign state of

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____

If more than one defendant is named in the complaint, attach additional pages providing
information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional
pages if needed.

ITOFFEE	R.	GAYLE
First Name	Middle Initial	Last Name
2010 POWELL AVE		
Street Address		
BRONX	NY	10472
County, City	State	Zip Code
917 952 5661	ITOFFEEGAYLE@YAHOO.COM	
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:	HOME BOX OFFICE, INC (HBO)		
	First Name	Last Name	
	Current Job Title (or other identifying information)		
	1100 AVENUE OF THE AMERICAS		
	Current Work Address (or other address where defendant may be served)		
	NEW YORK	NY	10036
	County, City	State	Zip Code
Defendant 2:	RACHEL STROM		
	First Name	Last Name	
	ATTORNEY FOR DEFENDANT, HBO		
	Current Job Title (or other identifying information)		
	1251 AVENUE OF THE AMERICAS 21 ST FL		
	Current Work Address (or other address where defendant may be served)		
	NEW YORK	NY	10020
	County, City	State	Zip Code
Defendant 3:	ADAM LASLER		
	First Name	Last Name	
	ATTORNEY FOR DEFENDANT, HBO		
	Current Job Title (or other identifying information)		
	1251 AVENUE OF THE AMERICAS 21 ST FL		
	Current Work Address (or other address where defendant may be served)		
	NEW YORK	NY	10020
	County, City	State	Zip Code

Defendant 4: STEVE SAPIENZA
 First Name Last Name
VICE PRESIDENT & SENIOR COUNSEL - LITIGATION
 Current Job Title (or other identifying information)
1100 AVENUE OF THE AMERICAS
 Current Work Address (or other address where defendant may be served)
NEW YORK NY 10036
 County, City State Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence: NEW YORK CITY, NY

Date(s) of occurrence: 2016

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

① THE DEFENDANT, HOME BOX OFFICE, INC (HBO) USED THE TRADEMARK "ART WE ALL" REGISTRATION 5108721 ALONG WITH THE ORIGINAL WORK OF ART OF THE COPYRIGHT REGISTRATION VA 2006958 IN SEASON 1 EPISODE 5 HE IN RACIST FIRE OF THEIR TELEVISION SERIES, VINYL, WITHOUT PERMISSION, COMPENSATION, OR ATTRIBUTION.

② THE PLAINTIFF'S INTELLECTUAL PROPERTY WAS FEATURED IN THE BACKGROUND AS THE ACTRESS WALKS BY IT IN A NIGHTTIME SCENE FROM SEASON 1 EPISODE 5 HE IN RACIST FIRE OF THE DEFENDANT'S SERIES, VINYL. THE COLOR OF THE DRESS THE ACTRESS WAS WEARING MATCHED

THE PLAINTIFF'S INTELLECTUAL PROPERTY IN A WAY THAT WAS NOT INCONSEQUENTIAL; IT WAS CALCULATED & COORDINATED.

③ IN A VIDEO PUBLISHED ON 2/2/16 ON HBO'S YOUTUBE CHANNEL TITLED "MAKING VINYL: RECREATING THE '70s" AT 3:15, SEGMENT TITLED "RECREATING THE CITY," BOTH THE ART DIRECTOR & THE VISUAL EFFECTS SUPERVISOR OF HBO'S VINYL, ADAM SCHER & LESLEY ROBSEN-FOSTER RESPECTIVELY, PROVIDE COMMENTARY ON HOW GRAFFITI WAS SUCH AN INTEGRAL ARTISTIC COMPONENT ON RE-CREATING THE COLORFUL NEW YORK CITY 1970s THEME THAT THE DEFENDANT'S SERIES WAS BASED UPON. MORE SPECIFICALLY, FOSTER GOES INTO DETAIL & EXPLAINS THAT "THE ART DEPARTMENT WOULD HIRE GRAFFITI ARTISTS TO MAKE THE TAGS ON CARDBOARD & I JUST PHOTOGRAPH THEM WITH HIGH RESOLUTION PHOTOGRAPHY & THE COMPOSITORS

WOULD TAKE THEM ONE AT A TIME, PUT THEM
ON BUILDINGS (DIGITALLY) & WE WOULD JUST
USE REFERENCE PHOTOGRAPHS." [HBO] (2016 FEB 2).

MAKING VINYL: RECREATING THE '70s [VIDEFILE]

RETRIEVED FROM <https://m.youtube.com/watch?v=vK8TEHM4CA>.

THE ART DEPARTMENT AT THE DEFENDANT'S (HBO)

VINYL, HAS NEVER ATTEMPTED TO CONTACT THE

PLAINTIFF, HIRE THE PLAINTIFF OR PAY THE LICENSING

FEE(S) TO THE PLAINTIFF, IDPPPEE R. GAYLE SO THAT

THE DEFENDANT CAN LEGALLY USE THE PLAINTIFF'S

INTELLECTUAL PROPERTY IN A SCENE OF THE ~~EPISODE~~

FIFTH EPISODE, HE IN RACLOT FIRE OF SEASON 1

OF THE DEFENDANT'S SERIES, VINYL.

④ THE PLAINTIFF, IDPPPEE R. GAYLE HOLDS A VALID

TRADEMARK FOR "ART WE ALL" ENTITLED TO

PROTECTION. "ART WE ALL" IS A REGISTERED

TRADEMARK UNDER THE CATEGORY OF PROVIDING

RETAIL SERVICES INCLUDING WORKS OF ART.

THERE IS NO CONNECTION OR AFFILIATION BETWEEN ART WE ALL NYC LLC & HOME BOX OFFICE, INC (HBO). THE DEFENDANT, HBO, HAS EXPLOITED & CAPITALIZED OFF THE PLAINTIFF'S "ART WE ALL" BRAND NAME RECOGNITION FOR THE COMMERCIAL PURPOSE OF PORTRAYING AN UNSANITIZED VERSION OF 1970S NEW YORK CITY IN DEFENDANT'S TELEVISION SERIES VINYL, SOLELY BE IN RACIST FIRE, SO THAT THEIR SERIES DEEMED MORE AUTHENTIC TO VIEWERS.

⑤ THE UNAUTHORIZED USE OF PLAINTIFF'S TRADEMARK & WORK OF ART OR A DERIVATION THEREOF OF PLAINTIFF'S COPYRIGHT REGISTRATION IN THEIR SERIES VINYL, WITHOUT PERMISSION OR CONSENT, COMPENSATION, OR ATTRIBUTION CONSTITUTES (AS DESCRIBED BY PLAINTIFF'S FORMER COUNSEL):

i) COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 504

ii) FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114(a)

iii) FEDERAL UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)

iv) UNFAIR COMPETITION & TRADEMARK INFRINGEMENT
UNDER RELATED STATE LAWS.

⑥ THE PLAINTIFF FEELS DISRESPECTED AS AN ARTIST
& BUSINESSMAN DUE TO THE DEFENDANT'S DELIBERATE
ACTS OF NON COMMUNICATION REGARDING THE
USAGE OF PLAINTIFF'S INTELLECTUAL PROPERTY. AND
FAILING TO ENFORCE THEIR PROTOCOL FOR ARTIST
OUTREACH. THERE HAS BEEN A SIGNIFICANT LOSS OF
PRODUCTIVITY THAT THE PLAINTIFF HAS EXPERIENCED,
PLAINTIFF'S TIME & ENERGIES HAVE BEEN DEVOTED
TO THE LEGAL SYSTEM INSTEAD OF CREATIVE ENDEAVORS
& MATTERS REGARDING HIS BUSINESS.

⑦ THE FACTS STATED & EVIDENCE INCLUDED IN
THIS AMENDED COMPLAINT ARE SUFFICIENT TO
AWARD THE PLAINTIFF, IDOPPEE R GAYLE
\$1,500,000.00 FOR EACH ACT OF INFRINGEMENT,

STATUTORY & PUNITIVE DAMAGES, AS WELL AS FORMER ATTORNEY'S FEES, TRAVEL EXPENSES TO & FROM COURT, PRINTING FEES, IN ADDITION TO THE INFLECTION OF EMOTIONAL DISTRESS THIS ENTIRE ORDEAL HAS CAUSED.

ATTACHED TO THIS AMENDED COMPLAINT ARE:

- i) IMAGES FROM SOI:EP5 FROM DEFENDANT'S SERIES VINYL FEATURING PLAINTIFF'S INTELLECTUAL PROPERTY
- ii) IMAGES OF PLAINTIFF'S INTELLECTUAL PROPERTY
- iii) CEASE & DESIST LETTER SENT TO DEFENDANT BY FORMER COUNSEL.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

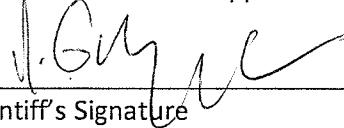
\$1,500,000.00 FOR EACH ACT OF INFRINGEMENT, STATUTORY & PUNITIVE DAMAGES, AS WELL AS FORMER ATTORNEY'S FEES, IN ADDITION TO THE INFLECTION OF EMOTIONAL DISTRESS THIS ENTIRE ORDEAL HAS CAUSED.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

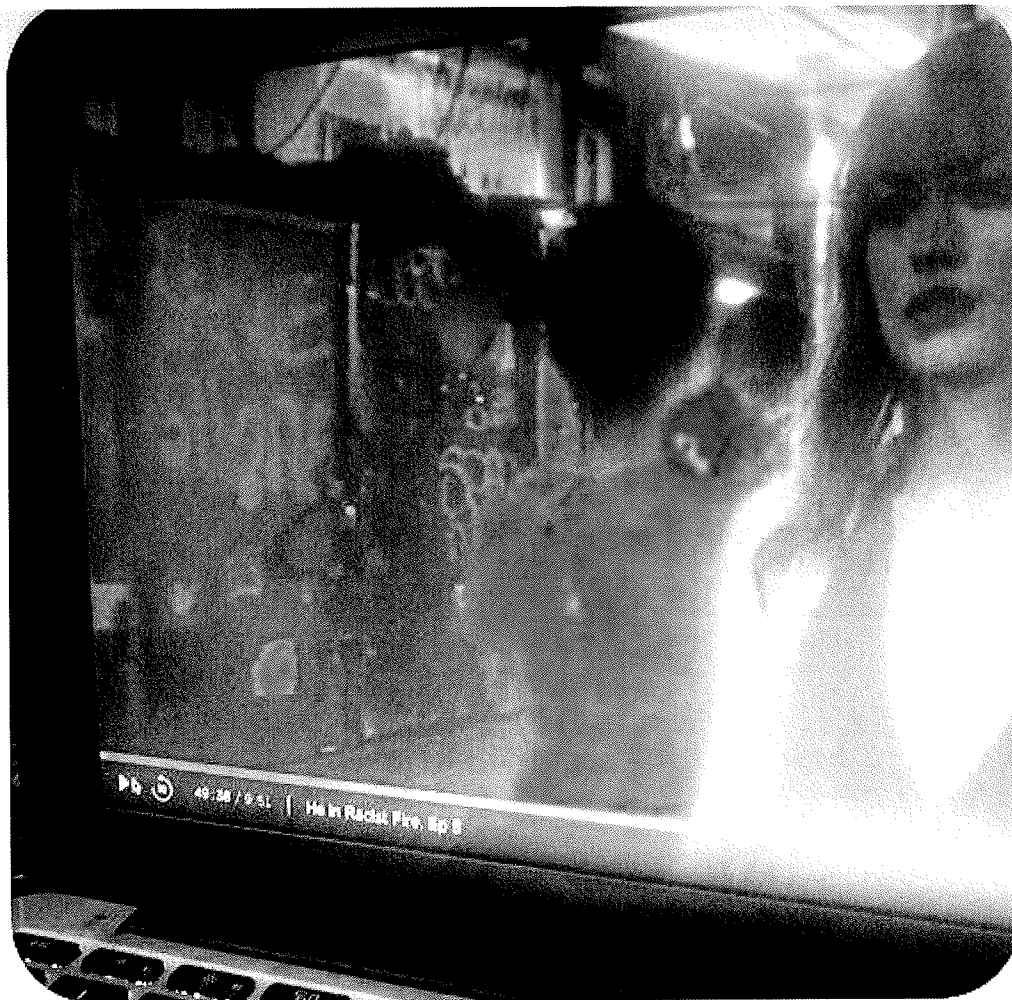
<u>8/25/17</u>		<u></u>
Dated		Plaintiff's Signature
<u>ITOFFEE</u>	<u>R.</u>	<u>GAYLE</u>
First Name	Middle Initial	Last Name
<u>2010 POWELL AVE</u>		
Street Address		
<u>BRONX:</u>	<u>NEW YORK</u>	<u>10472</u>
County, City	State	Zip Code
<u>917 952 5661</u>	<u>ITOFFEEGAYLE@YAHOO.COM</u>	
Telephone Number	Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☒ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.





Vinyl S01E05 49:38



Congrats bud



🕒 📶 42% 1:24 AM



♥ 51 likes

artweallone #artweall #artweallone #artweallnyc

View all 5 comments

facemaskxx @artweallone Boy u on a tear

ignitedesigns You are everywhere, big ups

@artweallone

NOVEMBER 19, 2015







April 23, 2017

Home Box Office, Inc.
Attn: Judith McCool
1100 Avenue of the Americas
New York, NY 10036
trademarks@hbo.com

Dear Ms. McCool:

We are contacting you on behalf of our Client, Itoffee Gayle.

Mr. Gayle is the owner of U.S. Trademark Registration 5108721 for the mark ART WE ALL. He is also owner of Copyright Registration No. VA 2006958 for the works of art attached hereto. This trademark and the copyrighted images possess significant goodwill and are of great value to our Client and his reputation as an artist and business person.

It has been brought to our Client's attention that Home Box Office, Inc (HBO), used the trademark, ART WE ALL, along with the original works of art of the copyright registration in an episode of your series entitled "Vinyl" without permission or consent. Specifically, Season 1, Episode 5 at 49:38. Mr. Gayle has the exclusive right to copy, distribute, make derivative works of, publicly display and license his copyrighted materials and trademark. Your company has not been given permission to use his intellectual property.

Your use of our Client's intellectual property may cause substantial monetary and reputational harm to our Client. Indeed, your unauthorized use of the trademark and works of art or a derivation thereof constitutes among other things, (i) federal trademark infringement under 15 U.S.C. §1114(a); (ii) federal unfair competition under 15 U.S.C. §1125(a); and/or (iii) unfair competition and trademark infringement under related state laws as well as copyright infringement which may include an award of profits for each act of infringement, statutory damages, as well as attorneys' fees and costs under 17 U.S.C. §504 et seq.

Accordingly, we demand that you immediately and permanently cease all use of the copyrighted images and the trademark, ART WE ALL, or any derivations thereof.

Further, Mr. Gayle will require an appropriate monetary payment, the amount to be determined, to compensate him for the damages caused as a result of your unauthorized activity.

Please acknowledge receipt of this letter within ten (10) business days with a statement indicating your company's intentions regarding the demands made herein.

It is our hope to resolve this matter amicably; however, we can assure you that we take this matter very seriously and in the absence of your compliance with our above demands, we will take all actions necessary to protect the rights of Mr. Gayle.

The statements set forth in this letter are not intended to be a full and complete statement of the facts in this matter. This letter is not intended to be a complete statement of our rights and shall not be construed as a waiver of any legal or equitable rights or remedies, all which are expressly reserved.

Sincerely,
/Laurie Marshall/
Laurie Marshall, Esq.